

REMARKS

The indication that claims 2, 3 and 7-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, is acknowledged. By the present amendment, claims 2, 3 and 7-13 have been written in independent form, such that these claims should now be allowed.

Also, by the present amendment, claim 1 has been amended to incorporate a feature of dependent claim 7 therein, such that claim 1 now recites the feature of "said liquid crystal layer having a twist angle which falls in a range of 40° to 70°", noting that the specification of this application and original claim 7 sets forth the range and various angles within such range, which contribute to the operation of the liquid crystal display apparatus as defined. Since this limitation is present in the dependent claims, it is apparent that such amendment does not raise new issues requiring further search and/or consideration, and the amendment is enterable, at this time. With regard to entry of such amendment, applicants note that while this action has been made final, applicants traverse the finality as being premature for the following reasons.

In the final Office Action dated January 6, 2004, the Examiner sets forth a rejection of claim 1 in the following manner.

Claim 1 is rejected under 35 U.S.C. 102(b) as
being anticipated by Kubo et al (JP 2000-29010).
(emphasis added)

Further, the Examiner apparently now contends that US PG-Pub 2001/0055082 is an equivalent of this Japanese language document (see paragraphs 2 and 3 at page 2 of the Office Action). On the other hand, in the first Office Action dated May 8, 2003, the Examiner stated:

Claim 1 is rejected under 35 U.S.C. 102(b) as
being anticipated by Kubo et al (JP 2000-19010).
(emphasis added)

It is noted that PTO-892 accompanying the Office Action of May 8, 2003 lists reference N as JP 2000-19010.

Applicants submit that the rejection as now set forth in the Office Action dated January 6, 2004 and indicated to be final is necessarily a different and new rejection than that set forth in the Office Action dated May 8, 2003, which is apparent by the different numbers for the Japanese language document and by the Examiner's now citing an English language equivalent, since applicant had pointed out that only an English language abstract had been provided and a translation of the cited document had not been provided. Reference is made to MPEP §706.07(a) which provides "Under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims..." (emphasis added).

Applicants submit that the rejection as now set forth represents a new ground of rejection not necessitated by applicant's amendment of claim 1 in response to the Office Action of May 8, 2003, and therefore, the finality of the Office Action is premature and should be withdrawn.

Applicants note that a Petition lies from the action taken by the Examiner with regard to this request for withdrawal of the finality of the Office Action.

As to the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Kubo et al (JP 2000-29010) as now set forth in the Office Action of January 6, 2004, and the rejection of claims 1 and 4-6 under 35 U.S.C. 102(e) as being anticipated by Kubo et al (U.S. Patent No. 6,295,109), such rejections are traversed insofar as they are applicable to the present claims, and reconsideration and withdrawal of the rejections are respectfully requested.

As has been previously pointed out in the Amendment in response to the prior Office Action in this application, as to the requirements to support a rejection under 35 U.S.C. 102, reference is made to the decision of In re Robertson, 49 USPQ 2d

1949 (Fed. Cir. 1999), wherein the court pointed out that anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. As noted by the court, if the prior art reference does not expressly set forth a particular element of the claim, that reference still may anticipate if the element is "inherent" in its disclosure. To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Moreover, the court pointed out that inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

Applicants note that in paragraph 5 at page 3 of the Office Action of January 6, 2004, the Examiner characterizes Kubo et al (JP 2000-29010) as disclosing various features including "said polarizer and said phase plate located on said lower side of said facing substrates forming an elliptical polarizer". (emphasis added) In order to support such position, the Examiner refers to US PG-Pub 2001/0055082, page 13, par. 0220, as being an equivalent of JP 2000-29010 and disclosing "said polarizer 6 and said phase plate 7 which are located on a lower side of substrate forming an elliptical polarizer" (emphasis added), (see paragraphs 2 and 3 of page 2 of the Office Action). Applicants submit that the Examiner has mischaracterized this alleged equivalent of JP 2000-29010, and contrary to the Examiner's position, page 13, paragraph 0220, not only fails to disclose in the sense of 35 U.S.C. 102 or teach the recited feature of claim 1 of "said polarizer and said phase plate located on said lower side of said facing substrates forming an elliptical polarizer" (emphasis added) and applicants submit that the English language disclosure of such publication, in fact, teaches away from the polarizer 6 and the phase plate 7 thereof forming an elliptical polarizer.

Turning to page 13, paragraph 0220 of Kubo et al (US PG-Pub 2001/0055082) states that:

The circularly polarized light incident on the liquid crystal layer 5 becomes elliptically polarized light by the birefringence of the liquid crystal molecules. The light does not become linearly polarized light perpendicular to the transmission axis of the polarizer 6 even after being transmitted through the $\lambda/4$ wave plate 7 and thus is transmitted through the polarizer 6. (emphasis added)

Applicants submit that it is apparent from a proper understanding of paragraph 0220 that there is no disclosure of "said polarizer 6 and said phase plate 7 which are located on a lower side of substrate forming an elliptical polarizer" as contended by the Examiner, but rather that the liquid crystal molecules of the crystal layer 5 enable elliptical polarization of the circularly polarized light.

Reference is made to the description in paragraphs [0159] and [0160] at page 10 of the cited publication which set forth that "The light incident on the upper surface of the polarizer 6 is transmitted through the polarizer 6 to be linearly polarized light parallel to the transmission axis of the polarizer 6 and then is incident on the $\lambda/4$ wave plate 7. The $\lambda/4$ wave plate 7 is arranged so that the transmission axis of the polarizer 6 and the slower optic axis of the $\lambda/4$ wave plate 7 make an angle of 45° . Thus, the light transmitted through the $\lambda/4$ wave plate 7 becomes circularly polarized light." Clearly, the polarizer 6 and the phase plate 7 do not form an elliptical polarizer, irrespective of the Examiner's contentions. Thus, applicants submit that Kubo et al (JP 2000-29010) and the alleged equivalent thereof represented as US PG-Pub 2001/0055082, contrary to the position set forth by the Examiner, fail to disclose in the sense of 35 U.S.C. 102 the recited feature of claim 1 of "said polarizer and said phase plate located on said lower side of said facing substrates forming an elliptical polarizer", and claim 1 patentably distinguishes over this cited prior art in the sense of 35 U.S.C. 102 and should be considered allowable thereover.

Additionally, applicants submit that by the present amendment, claim 1 has been amended to recite the feature of "said liquid crystal layer having a twist angle which falls in a range of 40° to 70°" and applicants submit that aforementioned cited art fails to provide any disclosure of a twist angle for the crystal layer thereof, and, in particular, a twist angle which falls in a range of 40° to 70°. The Examiner is reminded of the requirements of 35 U.S.C. 102 as set forth in In re Robertson, supra, and applicants submit that claim 1 patentably distinguishes over the aforementioned cited art in the sense of 35 U.S.C. 102 with respect to this feature also such that claim 1 should be considered allowable thereover.

With regard to the rejections of claims 1 and 4-6 under 35 U.S.C. 102(e) as being anticipated by Kubo et al, U.S. Patent No. 6,295,109, applicants submit that the disclosure of Kubo et al, U.S. Patent No. 6,295,109, is substantially identical to US PG-Pub 2001/0055082, since the related U.S. application data as indicated therein, provides that the application is a "Division of application No. 09/220,792, filed on Dec. 28, 1998, now Pat. No. 6,295,109..." (emphasis added). Hereagain, while the Examiner contends that Kubo et al ('109) discloses "said polarizer and said phase plate located on said lower side of said facing substrates forming an elliptical polarizer" as set forth in paragraph 6 at pages 3 and 4 of the Office Action, the Examiner has mischaracterized the disclosure of this patent. Applicants note that the corresponding disclosure in this patent that of paragraph [0220] of the publication is found at col. 18, lines 12-23, while the corresponding disclosure of paragraphs [0159] and [0160] of the cited publication is found at col. 17, lines 37-45. Thus, it is apparent that Kubo et al ('109) like the Japanese language document and the alleged English language equivalent thereof fail to disclose the claimed features of claim 1 in the sense of 35 U.S.C. 102 and claim 1 and dependent claims 4-6 patentably distinguish thereover.

Applicants further note that Kubo et al ('109), like the Japanese language document and the alleged English language document thereof, fail to disclose that the liquid crystal layer has a twist angle, as well as that the liquid crystal layer has a twist angle which falls in a range of 40° to 70°, and applicant submit that claim 1, as amended, further patentably distinguishes over Kubo et al ('109) in the sense of 35 U.S.C. 102 and should be considered allowable thereover.

In view of the above amendments and remarks, applicants submit that in addition to claims 2, 3 and 7-13, which were objected to and which have been written in independent form, and therefore allowable, claim 1 and its dependent claims 4-6, recite features not disclosed or taught in the cited art, such that these claims should also be considered allowable at this time. Accordingly, issuance of an action of a favorable nature is courteously solicited.

To the extent necessary, applicant's petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (500.40583X00) and please credit any excess fees to such deposit account.

Respectfully submitted,



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